

Ayer



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Orange State Consultants

File: B-223030

Date: July 15, 1986

DIGEST

1. GAO will not review proposals in a negotiated procurement independently, since the judgment of the relative merits of offers is, in the first instance, the contracting agency's responsibility. Moreover, GAO will not object to the agency's determinations in that regard where they are not shown to have been unreasonable.
2. Protest against time afforded to prepare initial and revised proposals must be filed before the respective dates they are due.
3. It is not necessarily unreasonable for an agency to solicit a best and final offer from a firm that submits the best technical proposal but whose offered price is too high, where the agency clearly advises the firm of the pricing deficiency.

DECISION

Orange State Consultants (OSC) protests the award of a contract to the Salvation Army by the Department of Justice under request for proposals (RFP) No. 274-062-6 for residential halfway house services. OSC questions the evaluation of proposals, the timeframes for offer submission and evaluation, and the Salvation Army's eligibility for the award. We deny the protest in part and dismiss it in part.

OSC contends that the Salvation Army's prices are too low to cover everything the RFP requires, so that Justice must have reduced the scope of work for the Salvation Army's benefit. Justice, in addition to denying OSC's allegation, has furnished a copy of the awarded contract showing that no work items were waived. Justice also reports that the Salvation Army has previously undertaken 14 similar contracts at comparable prices.

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We deny the protest on this issue. There is nothing in the protest record to suggest that the scope of work in the awarded contract is anything less than the scope of work that was set out in the RFP and against which proposals were evaluated. See Brizard Co., B-215595, Oct. 11, 1984, 84-2 C.P.D. ¶ 399. Moreover, as to whether the Salvation Army actually performs all the work at the contract price, that is a matter of contract administration, which is the responsibility of the contracting agency, not our Office. 4 C.F.R. § 21.1(f)(1) (1986).

The protester also asks that our Office undertake a complete evaluation of the relative merits of OSC's and the Salvation Army's proposals.

Generally, it is not our function to evaluate independently the merits of competing proposals. Westinghouse Electric Corp., 57 Comp. Gen. 328 (1978), 78-1 C.P.D. ¶ 181. The overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion in evaluating them. Struthers Electronics Corp., B-186002, Sept. 10, 1976, 76-2 C.P.D. ¶ 231. Therefore, we will not disturb such determinations absent a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 C.P.D. ¶ 607.

OSC, which has the burden of showing that the evaluation was improper, Joseph L. DeClerk and Assoc., Inc., B-220142, Nov. 19, 1985, 85-2 C.P.D. ¶ 567, has offered no evidence to rebut Justice's evaluation of proposals, and there is nothing in the material submitted by the agency in response to the protest to suggest that the evaluation was unreasonable. Accordingly, we will not question the agency's judgments in that regard.

OSC complains about the amount of time that offerors were given to prepare their initial proposals, revise them, and submit first and later second best and final offers, particularly in comparison with the time it took Justice to conduct the procurement. We dismiss this matter as untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.1(a)(1), require that any objection to the initial proposal due date be filed before that date, and that any objection to a timeframe established for revising proposals be filed before the date the revision is due. Sunset Realty Sales Assoc., B-221390, Mar. 31, 1986, 86-1 C.P.D. ¶ 303; Clark & Lewis, Inc., B-196954, Jan. 8, 1980, 80-1 C.P.D. ¶ 24. OSC, however, did not file its protest until after the award.

To the extent OSC complains that Justice took relatively too long to evaluate offers and select a contractor, Justice's report explains the factors that impacted on this particular procurement. They included, as discussed below, the legitimate need to amend the RFP and make a second call for best and final offers, as a result of a deep cut in the program budget. OSC simply has not established any irregularity in the amount of time taken to process the procurement.

OSC further contends, in its comments on the agency report, that since its initial price was so much greater than the Salvation Army's, Justice should not have asked OSC for best and final offers. We find no merit in OSC's position.

The RFP set out seven evaluation factors. The four most important factors, staff quality, program quality, physical facility and per capita rate (i.e., unit price), were worth up to 20 points each. The three remaining factors, accreditations, location/transportation and experience, were worth up to 10, 5 and 5 points, respectively.

After the evaluation of initial proposals, OSC's technical offer was judged better than the Salvation Army's under three of the six nonprice evaluation factors, equal in two of the other three, and significantly better overall; in fact, OSC's technical offer was the best of the four received. Justice, in requesting a first best and final offer, advised OSC that its price was unrealistically high. Although a proposal may be excluded from the competitive range for purposes of discussion if its price is so high that the offer has no reasonable change of being selected for award, Communication Mfg. Co., B-215978, Nov. 5, 1984, 84-2 C.P.D. ¶ 497, we do not think Justice acted unreasonably in giving the firm that submitted the best technical proposal a chance to rethink its costs and reduce its price offer to what the agency considered a realistic level. We note, however, that OSC actually raised its initial price in submitting its first best and final offer despite the advice Justice had given the firm.

As to the request for a second best and final offer, that was occasioned by budget cuts that resulted in a 40-percent decrease in Justice's estimated requirements under the RFP. In this respect, it generally is proper to give offerors in the competitive range an opportunity to change their proposals in response to a significant change in the government's needs from those on which the proposals were submitted. See Cadillac Gage Co., B-209102, July 15, 1983, 83-2 C.P.D. ¶ 96 at p. 14.

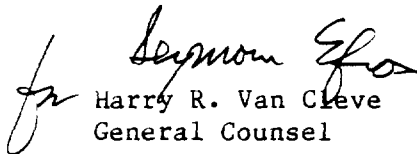
Although Justice perhaps should have recognized, upon deciding that another round of best and final offers was needed, that OSC was not a viable competitor, so should OSC itself, having increased an already unrealistically high price. In our view, the fault for the expense of OSC responding to Justice's second request for a best and final offer thus was OSC's as much as the government's. (OSC raised its unit price even further in its response.)

OSC also objects to the Salvation Army's use, in its proposal, of language allegedly borrowed from another Justice solicitation for like services. OSC urges that the presence of the language indicates collusion between the Salvation Army and Justice.

We find no merit to this allegation. The current RFP itself contains the same language found in the solicitation to which OSC refers, and the language concerns only the specific rules under which Justice expects the contractor to operate the facility. One example is the RFP statement that "The Contractor shall furnish each new resident upon arrival with a copy of Prohibited Acts imposed by the Federal Prison System." We see nothing inherently wrong with an offeror adopting the RFP's language to respond to that and like provisions.

Finally, OSC questions whether Justice's award is proper on the basis that the Salvation Army is a religious organization. We are unaware, however, of any prohibition against the government contracting with an organization like the Salvation Army.

The protest is denied in part and dismissed in part.


Harry R. Van Cleve
General Counsel